

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Implementing a Nationwide, Broadband, ) PS Docket No. 06-229  
Interoperable Public Safety Network in the 700 )  
MHz Band )

**ORDER**

**Adopted: October 27, 2010**

**Released: October 27, 2010**

By the Chief, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. By this *Order*, the Public Safety and Homeland Security Bureau (Bureau) grants the request for waiver by the District of Columbia (the District) for a 45-day extension to pay the administrative fee due to the Public Safety Spectrum Trust (PSST) under the budget previously approved by the Bureau for administration of the long term *de facto* spectrum leases in the 700 MHz public safety broadband spectrum.<sup>1</sup>

**II. BACKGROUND**

2. On May 12, 2010, the Commission granted, with conditions, twenty-one waiver Petitions filed by public safety entities (Petitioners) seeking early deployment of statewide or local public safety broadband networks in the 700 MHz public safety broadband spectrum (763-768 MHz and 793-798 MHz).<sup>2</sup> The Commission found that the Petitioners generally met the standard for waiver of the Commission's rules and that the public interest warranted allowing early deployment, so long as the conditions imposed by that order were met. Among other conditions, the Commission required that each Petitioner obtain a long term *de facto* spectrum lease from the PSST.<sup>3</sup>

3. The Commission further required the PSST to submit for approval by the Bureau a budget for any proposed administrative fees to be paid by the Petitioners under the leases.<sup>4</sup> On August 11, 2010, the Bureau approved the PSST's proposed budget, finding the proposed \$15,000 first year administrative fee to be reasonable.<sup>5</sup> The Bureau appended the approved budget to the *Budget Order*, which included

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<sup>1</sup> See District of Columbia Request for Waiver of Deadline to Submit Lease Administration Fee, PS Docket 06-229 (filed Oct. 21, 2010) (*Waiver Request*).

<sup>2</sup> See Implementation of a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, 25 FCC Rcd 5145 (2010) (*Waiver Order*).

<sup>3</sup> *Id.* at 5152-53, ¶¶ 20-24.

<sup>4</sup> *Id.* at 5155, ¶ 33.

<sup>5</sup> See Implementation of a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Order*, DA 10-1494 (PSHSB Aug. 11, 2010) (*Budget Order*).

the notation that administrative fee payments would be due 60-days after the approval of a Petitioner's lease.<sup>6</sup> The Bureau approved the submitted leases on September 2, 2010.<sup>7</sup>

### III. DISCUSSION

4. On October 21, 2010, the District filed a request seeking a waiver of the 60-day deadline for submission of the administrative fee to the PSST. The District states that while it is in the process of effectuating the payment, unforeseen administrative delays render it unable to make payment by November 1, 2010.<sup>8</sup> The District "requests a waiver such that its payment of the fee within 45 days of November 1 (*i.e.*, by December 15, 2010) be considered timely under FCC rules and the District's lease with the PSST."<sup>9</sup> The District asserts that the requested delay is "minor," and that the payment is already in process.<sup>10</sup> The District states that failure to grant the waiver would frustrate the goal of deploying broadband to protect public health and safety, and that such a minor delay is vastly outweighed by the benefits that the District's LTE network will provide to the public.<sup>11</sup>

5. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;<sup>12</sup> or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>13</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>14</sup> Based on the information before us, we conclude that a grant of the District's request is warranted under either standard.

6. We reiterate, however, that the conditions imposed on the Petitioners, including those related to the administrative fee payments, cooperation with the PSST, working with the Emergency Response Interoperability Center (ERIC) and other related deadlines and reporting, were found necessary and appropriate to ensure that the Petitioners had sufficient planning and commitment to the deployment process.<sup>15</sup> While we find that the limited waiver requested here is warranted under the circumstances presented by the District, we encourage all Petitioners to proceed diligently with each of the conditions imposed by the *Waiver Order* to ensure timely progress and open collaboration with all stakeholders.

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<sup>6</sup> *Id.* at app. A.

<sup>7</sup> Public Safety and Homeland Security Bureau Approves Long Term De Facto Transfer Spectrum Lease Agreements Filed by Conditional Waiver Recipients to Establish 700 MHz Interoperable Public Safety Wireless Broadband Networks, 25 FCC Rcd 12673 (PSHSB 2010) (*Lease Approval PN*).

<sup>8</sup> *Waiver Request* at 1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.*

<sup>12</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>13</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>14</sup> *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

<sup>15</sup> *See, e.g. Waiver Order* at 5151, 5156, 5166, ¶¶ 18, 35, 64.

**V. ORDERING CLAUSES**

7. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1, 4(i), 301, 303, 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 301, 303, 332, and 337, and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the District of Columbia's waiver request IS GRANTED.

8. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's Rules, 47 C.F.R. §§ 0.191, 0.392, and the *Waiver Order*, 25 FCC Rcd 5145, 5155, ¶ 33 (2010).

FEDERAL COMMUNICATIONS COMMISSION

James Arden Barnett, Jr., Rear Admiral (Ret.)  
Chief, Public Safety and Homeland Security Bureau